

**A SUBSTITUTE ORDINANCE**

**BY CITY UTILITIES COMMITTEE**

**AMENDING CHAPTER 74, ARTICLE VI "FLOOD AREA REGULATIONS" TO REDUCE OR AVOID FUTURE FLOOD LOSSES, ENHANCE THE FUNCTION OF THE FLOODPLAIN, AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") has been granted such powers as may be necessary and proper to promote the safety, health, peace, and general welfare of the city and its inhabitants pursuant to Article IX, Section II of the Constitution of the State of Georgia, O.C.G.A. § 36-35-1 *et seq.*, and the Atlanta City Charter §§ 1-102(b) and 1-102(c)(42); and

**WHEREAS**, as a condition of participation in the National Flood Insurance Program ("NFIP") and for related financial assistance, the City is required to adopt an adequate floodplain ordinance with effective enforcement provisions consistent with federal standards to reduce or avoid future flood losses pursuant to 42 U.S.C. § 4001 *et seq.*, and 44 CFR Parts 59, 60, 65 and 70; and

**WHEREAS**, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the Metropolitan North Georgia Water Planning District's ("District's") Model Floodplain Management / Flood Damage Prevention Ordinance (2006) or an equally effective floodplain management ordinance; and

**WHEREAS**, the Governor of the State of Georgia declared a State of Emergency for seventeen counties including DeKalb and Fulton, because severe weather that began on September 18, 2009, resulted in severe floods, property damage, injury, and loss of life; and

**WHEREAS**, on September 25, 2009, the President of the United States of America issued a Major Disaster Declaration for DeKalb, Fulton, and other Georgia counties as a result of the same severe floods, property damage, injury, and loss of life (FEMA-1858-DR, 74 FR 51165-03 (2009)); and

**WHEREAS**, the City of Atlanta has identified over 400 structures that were damaged in the flood, and a number of these structures may be required to elevate or relocate to minimize future flood damage; and

**WHEREAS**, it is in the best interests of the City to clarify rules for elevating existing single family residential structures in floodplains and to adopt other provisions necessary for the City's flood area regulations to comply with federal laws and to be at least equally effective as the District's Model Floodplain Management / Flood Damage Prevention Ordinance,

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:**

**SECTION 1:** That Atlanta City Code § 74- 201 entitled "Intent" is hereby amended to read as follows:

**Sec. 74-201. Intent and disclaimer.**

- (a) *Intent.* The intent of this article is to regulate and restrict uses and structures within the riverine areas of the City of Atlanta subject to periodic severe inundation in order to protect life and property, to prevent or minimize the hazards and damage which follow such inundation and to reduce the public cost of rescue efforts, relief efforts and flood control activities made necessary by such inundation; to protect the natural function and character of the floodplain and surrounding areas; and to enable owners of property within the City of Atlanta to qualify for national flood insurance.
- (b) *Disclaimer of liability.* The Atlanta City Council finds the degree of flood protection required by this ordinance to be reasonable and consistent with historically established and nationally accepted levels of protection based on scientific and engineering practices. Larger floods can and will occur; flood heights may be increased by human-made or natural causes. This ordinance does not imply that land outside the floodway, floodplain, Special Flood Hazard Area, or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**SECTION 2:** That Atlanta City Code § 74-203 entitled "Definitions of words and phrases" is hereby amended to read as follows:

**Sec. 74-203. Definitions of words and phrases.**

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

*Base Flood Elevation (BFE)* means the highest water surface elevation anticipated at any given point during the base flood.

*Commissioner* means the Commissioner of the Department of Watershed Management, or a designee.

*Elevated structure* means an existing structure which has been raised or rebuilt in compliance with this ordinance.

*Floodplain* means any area of land presently having natural or man-made contours of elevation at or below the base flood elevation shown on the flood maps and those areas of land which are not so shown on the flood maps where inundation is likely to occur during a base flood as determined from evidence of prior flooding or as determined by hydrologic studies to establish the probable depth of such floodwaters.

*Floodway* means any channel through which water passes at depths or velocities capable of discharging a base flood without increasing the elevation to which floodwaters would rise by more than one foot anywhere in a special flood hazard area.

*Footprint area* means the enclosed area of the horizontal dimensions of a structure as defined by the exterior walls and as projected on the ground. Footprint area shall not include any decks, patios, porches, garages, or multiple floors for the purpose of this calculation.

*Highest observed flood* means the water surface elevation of the highest flood on record in the Department of Watershed Management or as measured from the lowest grade adjacent to the structure to the top of the high water mark.

*Lowest floor* means the lowest enclosed area of a structure, including the basement. An unfinished, flood-resistant area below an elevated structure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such area is built in compliance with this ordinance.

*Single family residential* shall mean single family dwellings as defined in Atlanta City Code § 16-29.001(12)(a)1.

*Special Flood Hazard Area (SFHA)* means the land subject to a one percent or greater chance of flooding in any given year. This includes all floodplain and flood prone areas at or below the base flood elevation (including A, A1-30, A-99, AE, AO, AH, and AR on the Flood Hazard Boundary Map or the Flood Insurance Rate Map), and all other areas subject to inundation during the base flood.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the value of the structure before the damage occurred, as provided in 44 C.F.R. § 59.1.

*Substantial improvement* means any combination of repairs, reconstruction, alteration, or improvements to a building taking place during a 10-year period in which the cumulative cost equals or exceeds 50 percent of the value of the structure prior to the improvement, as provided in 44 C.F.R. § 59.1 and Section 2 of the Metropolitan North Georgia Water Planning District's Model Floodplain Management / Flood Damage Prevention Ordinance (2006).

*Value of the structure* means (1) the actual cash value of the structure as set out in "Table 100 Building Valuation Data" at § 104.2 of the Atlanta City Code, and as permitted by FEMA Publication 213 page 10, or (2) the appraised value of the structure according to the property tax records in the Fulton County or DeKalb County tax assessor database.

**SECTION 3:** That Atlanta City Code § 74-204 entitled "Permits Required" is hereby amended to read as follows:

**Sec. 74-204. Permits required.**

Use of lands and buildings, and construction, reconstruction, repair, modification or demolition of structures within floodplains, including special flood hazard areas, shall require review and approval of a permit by the Commissioner.

Any proposal which includes any of the activities described in this article shall be submitted to the Commissioner for review before any such activity is commenced. The Commissioner may authorize the approval of any of such activities upon a finding, based on detailed plans and specifications submitted with the proposal, that the activity can be completed and occupied or used in full compliance with the requirements of this article.

No part of any such activity shall be commenced before such permit approval has been issued and all other permits and licenses required by applicable law have been issued or obtained. The Commissioner may recommend the revocation of any such permit approval when the Commissioner determines the activity is not being accomplished, or that the land is not being used or occupied, as shown on the plans and specifications approved by the Commissioner. A permit approval so revoked may be reinstated upon application by the holder under such rules and conditions as are established by the Commissioner consistent with the requirements of this article and other applicable laws.

The Commissioner shall not, by authorizing the approval of a permit under the authority of this article, authorize any use of land, any extension or enlargement of a use of land which existed before the original date of enactment of the provisions of said article, or the commencement of any of the activities described in this article, where the effect thereof would be to decrease the volume of existing flood storage on that land or to increase flooding conditions upstream, downstream or adjacent to that land.

(1) *Protection of floodways.* The floodway shall be that as defined in the flood insurance study, City of Atlanta, Georgia, Fulton and DeKalb County, Federal Emergency Management Agency, revised June 22, 1998, and as it may be subsequently revised or extended. On those watercourses and rivers regulated hereunder where the floodway has not been defined in the said flood insurance study and until such time as these watercourses and rivers are defined in an officially adopted or revised flood insurance study, the floodway shall be defined as the channel of the watercourse or river and the adjacent areas of the defined or undefined floodplain that must be reserved in order to discharge the 100-year base flood without cumulatively increasing the water surface elevation more than one foot upstream of, downstream of, or at the point being considered. No fill or encroachments shall be placed within the defined floodway that would impair the ability to carry and discharge the waters resulting from the 100-year base flood.

(2) *Floodplain protection.* The Commissioner shall not authorize the approval of any permit authorizing the placement of fill or stored materials, or the construction of any building or other structure within the floodplain. Earth-disturbing activities in the floodplain shall be permitted only when the resulting configuration shall allow stormwater to enter the floodway by sheet flow (not channelized flow) and results in no loss of existing flood volume. Any earth-disturbing activities within a floodplain shall be subject to requirements of stream bank buffer limits and should be constructed using best management practices for soil erosion and sedimentation control. The use of compensating excavation or contouring procedures to modify flood hazard limits may only apply to install necessary public roadway and utilities within the flood limits to support existing and new property(s) which are not within the flood limits.

All applications for permits issued by the Commissioner which would allow any use or construction wholly or partly in a special flood hazard area shall include detailed plans and specifications which demonstrate that no expansion of a special flood hazard area would result from the work which would be authorized by any such permit. No such permit shall authorize any proposed use or construction which would have a finished elevation less than two (2) feet higher than the nearest base flood elevation and that would be closer than fifteen (15) feet from the nearest base flood elevation, and no such permit shall be issued until the plans and specifications submitted are in compliance with this ordinance and have been authorized by the

Commissioner. Any comments or requirements endorsed on such plans and specifications, or on an addendum thereto, by the Commissioner shall become a part of any permit issued for the work covered by the plans and specifications and shall be enforced as are all other requirements applicable to such permit.

(3) *Reserved*

(4) *Modification to existing structures or existing usages of the floodplain in violation of, but predating the provisions of this article.* Minor modifications and routine maintenance of uses and structures which were lawful prior to the original date of enactment of the provisions of this article, including existing structures, fills, pavements, utilities, mobile homes, mobile home sites and other facilities, shall be subject to the following restrictions:

Any modification to an existing usage, when such existing usage is in violation of this article, that enhances the protection of life or property or which is reasonably necessary to the maintenance and upkeep of the property concerned and which does not extend the scope and magnitude of the existing violation of these regulations, is permitted provided the value of such modification or maintenance does not exceed 50 percent of the value of the structure or total existing usage prior to such modification or maintenance, excluding the value of the land but including the value of existing structures, utility service connections, fills, pavements, slabs, mobile home sites and other facilities which can be reasonably demonstrated as an integral part of that existing usage.

Any improvement, modification or maintenance and any repairs or reconstruction required by any reason, including damages arising from normal deterioration, flood, other natural act or accident, of any existing usage where such existing usage is in violation of this article, shall bring that existing usage under the scope of the regulations set forth in this subsection; and that existing usage shall be brought into compliance with this article, providing that the total value of such improvement, modification, maintenance, repair or reconstruction exceeds 50 percent of the value of the structure or existing usage before such improvement, modification or maintenance or before such flood, other natural act or accident, excluding the value of the land but including the prior value of structures, utility service connections, fills, pavements, slabs, mobile home sites and other facilities which can be reasonably demonstrated as an integral part of the existing usage prior to the event.

**SECTION 4:** That a new section 74-205 of the Atlanta City Code entitled “Elevation of Existing Structures” is hereby added to read as follows:

**Sec. 74-205. Elevation of existing single-family residential structures.**

- (a) *Substantially Damaged or Substantially Improved Structures.* If an existing single family residential structure located within the floodplain, floodway, or Special Flood Hazard Area has sustained substantial damage or is proposed for substantial improvement, the structure shall comply with § 74-204, which requires that structures be located not less than fifteen (15) feet horizontally and two (2) feet vertically beyond the nearest base flood elevation.
- (b) *Standards for Elevating Existing Single Family Structures.* If, due to site conditions, an existing single-family residential structure cannot comply with the fifteen (15) foot horizontal requirement, the structure may be elevated in accordance with either § 74-205(b)(2) or § 74-205(b)(3); provided however, § 74-205(b)(1) shall apply to all elevated structures regardless of whether § 74-205(b)(2) or § 74-205(b)(3) applies.
  - (1) *Elevation of Existing Structures.* The following requirements apply to elevation of any existing single family residential structures:
    - (i) Design and construction of elevated structures shall utilize methods and practices that minimize flood damage and current and future encroachment into the floodway and floodplain;
    - (ii) The elevation of the structure's lowest floor shall be the greater of either: three (3) feet above the base flood elevation or two (2) feet above the highest observed flood;
    - (iii) Elevated structures shall be constructed with materials and utility equipment resistant to flood damage in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008 or as amended;
    - (iv) The area below the lowest floor of an elevated structure shall be flood-resistant, unfinished, and designed with piers or wall openings to facilitate the natural flow of floodwaters under the structure;
    - (v) The unfinished and flood-resistant area below the lowest floor shall remain unoccupied and shall only be used for parking vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area;

- (vi) The interior portion of the area below the lowest floor shall not be partitioned or finished into separate rooms; provided however, the minimum area necessary for access to upper floors may be finished with flood damage-resistant materials in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008, or as amended;
- (vii) Elevated structures shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (viii) Heating and air conditioning equipment and components (including ductwork), electrical, ventilation, plumbing equipment (including water heater), and other service facilities shall be located at least three (3) feet above the base flood elevation or two (2) feet above the highest observed flood (whichever is greater) to prevent water from entering or accumulating within the components during conditions of flooding;
- (ix) Designs for complying with the requirements of this ordinance shall be certified by either a professional engineer or architect;
- (x) Landings and stairs that allow for the natural flow of floodwaters will be allowed for minimum entry access;
- (xi) If the proposed elevated structure is located in multiple flood zones or if multiple base flood elevations cross the site, the higher or most protective base flood elevation shall take precedence;
- (xii) The design shall provide for the drainage of floodwaters in not less than seventy-two (72) hours pursuant to FEMA Technical Bulletin 1 (August 2008); and
- (xiii) A file-stamped copy of an elevation certificate filed in the land records of the county in which the property is located shall be submitted to the Commissioner prior to the issuance of a certificate of occupancy. This elevation certificate shall be prepared by a licensed surveyor and shall document the elevation of the lowest floor relative to mean sea level and compliance with the ordinance.

- (2) *Elevation of Existing Structure via Jacking on Existing Foundation.* An existing structure may be elevated by jacking, intact, on an existing foundation provided the criteria of § 74-205(b)(1), above, are met in addition to the following criteria:
- (i) No elevated structure shall exceed the original geometric footprint area or horizontally expand living space into or over the floodplain;
  - (ii) Foundations shall contain a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding as provided in 44 C.F.R. § 60.3 and Section 5 of the Metropolitan North Georgia Water Planning District's Model Floodplain Management / Flood Damage Prevention Ordinance (2006);
  - (iii) The bottom of all openings shall be no higher than one foot above grade; and
  - (iv) Openings may be equipped with screens, louvers or other coverings provided they permit the flow of floodwater in both directions.
- (3) *Elevation of Existing Structure via Demolition and Rebuilding on an Equivalent Footprint Area.* An existing structure may be demolished and relocated on the lot such that the passage of water is facilitated or the floodplain is otherwise enhanced or protected provided the criteria of § 74-205(b)(1), above, are met in addition to the following criteria:
- (i) No elevated structure shall exceed the original footprint area or increase the net encroachment into or over the floodplain; and
  - (ii) Foundations shall be designed to resist anticipated hydrodynamic loads, potential for debris impact, and scour pursuant to FEMA Technical Bulletin 1 (August 2008). Foundations shall be designed with the following criteria:
    - (A) The total area of the walls below the base flood elevation exposed to flood waters shall be at least fifty (50) percent open. Wall openings shall be distributed along all walls exposed to flood waters;
    - (B) The bottoms of all wall openings shall be at grade;

- (C) Garage doors not allowing the natural flow of floodwaters when closed shall not be considered wall openings; and
- (D) Openings may be equipped with grilles, louvers, or bars provided they allow the natural flow of floodwater in both directions.

**SECTION 5:** That a new section 74-206 of the Atlanta City Code entitled “Enforcement” is hereby added to read as follows:

**Sec. 74-206. Enforcement.**

The Commissioner is authorized to enforce the requirements of this article in accordance with the procedures set forth in this Section.

- (a) *Violations.* Any person who conducts construction activities in violation of this article shall be subject to the general penalty set out in § 1-8 and shall be required to modify or remove the unpermitted construction to achieve compliance with this article. Each day during which violation or failure to comply continues shall be a separate violation.
- (b) *Stop work orders.* The Commissioner of the Department of Watershed Management, and the Commissioner of the Department of Planning and Community Development, or their respective designees, are each authorized to issue stop work orders to any person that violates this article. Stop work orders shall be effective immediately and remain in effect until corrective actions have occurred.
- (c) *Building permit.* If the City of Atlanta determines that a permittee has failed to comply with any provision of this article, the Commissioner of the Department of Planning and Community Development or said Commissioner's designee may suspend or revoke the building permit.

**SECTION 6:** That a new section 74-207 of the Atlanta City Code entitled “Relationship to Other Laws” is hereby added to read as follows:

**Sec. 74-207. Relationship to other laws.**

- (a) *Compatibility with other regulations.* This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, deed restriction or other provision of law. The requirements of this ordinance are in addition to the requirements of any

other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for the riparian environment shall control.

- (b) *Relationship to 42 U.S.C. 4001 et seq.* This ordinance is enacted pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*), 44 C.F.R. § 60.1 *et seq.*, and to implement the requirements of the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* Words and phrases used in this article which are defined in the National Flood Insurance Program rules and regulations codified at 44 C.F.R. § 59.1 *et seq.* and effective December 1, 1976 (41 FR 46968 *et seq.*), and as they may be revised, shall have the meanings set out in such rules and regulations unless the context in which such words or phrases are used in this article clearly imports a different meaning, or unless otherwise defined herein.
- (c) *Severability.* If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**SECTION 7:** That all ordinances or parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

**AN ORDINANCE  
BY CITY UTILITIES COMMITTEE**

**AN ORDINANCE TO AMEND CHAPTER 74, ARTICLE VI "FLOOD AREA REGULATIONS" TO REDUCE OR AVOID FUTURE FLOOD LOSSES, ENHANCE THE FUNCTION OF THE FLOODPLAIN, AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") has been granted such powers as may be necessary and proper to promote the safety, health, peace, and general welfare of the city and its inhabitants pursuant to Article IX, Section II of the Constitution of the State of Georgia, O.C.G.A. § 36-35-1 *et seq.*, and the Atlanta City Charter §§ 1-102(b) and 1-102(c)(42); and

**WHEREAS**, as a condition of participation in the National Flood Insurance Program ("NFIP") and for related financial assistance, the City is required to adopt an adequate floodplain ordinance with effective enforcement provisions consistent with federal standards to reduce or avoid future flood losses pursuant to 42 U.S.C. § 4001 *et seq.*, and 44 CFR Parts 59, 60, 65 and 70; and

**WHEREAS**, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the Metropolitan North Georgia Water Planning District's ("District's") Model Floodplain Management / Flood Damage Prevention Ordinance (2006) or an equally effective floodplain management ordinance; and

**WHEREAS**, the Governor of the State of Georgia declared a State of Emergency for seventeen counties including DeKalb and Fulton, because severe weather that began on September 18, 2009, resulted in severe floods, property damage, injury, and loss of life; and

**WHEREAS**, on September 25, 2009, the President of the United States of America issued a Major Disaster Declaration for DeKalb, Fulton, and other Georgia counties as a result of the same severe floods, property damage, injury, and loss of life (FEMA-1858-DR, 74 FR 51165-03 (2009)); and

**WHEREAS**, the City of Atlanta has identified over 400 structures that were damaged in the flood, and a portion of these structures may be required to elevate or relocate to minimize future flood damage,

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:**

**SECTION 1:** That Atlanta City Code § 74- 201 entitled “Intent” is hereby amended to read as follows:

**Sec. 74-201. Intent and disclaimer.**

(a) Intent. The intent of this article is to regulate and restrict uses and structures within areas of the City of Atlanta subject to periodic severe inundation in order to protect life and property, to prevent or minimize the hazards and damage which follow such inundation and to reduce the public cost of rescue efforts, relief efforts and flood control activities made necessary by such inundation; ~~and to protect the~~ natural function and character of the floodplain and surrounding areas; and to enable owners of property within the City of Atlanta to qualify for national flood insurance.

(b) Disclaimer of liability. The Atlanta City Council finds the degree of flood protection required by this ordinance to be reasonable and consistent with historically established and nationally accepted levels of protection based on scientific and engineering practices. Larger floods can and will occur; flood heights may be increased by human-made or natural causes. This ordinance does not imply that land outside the floodway, floodplain, Special Flood Hazard Area, or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**SECTION 2:** That Atlanta City Code § 74-203 entitled “Definitions of words and phrases” is hereby amended to read as follows:

**Sec. 74-203. Definitions of words and phrases.**

~~Words and phrases used in this article which are defined in the national flood insurance rules and regulations effective December 1, 1976 (41 Federal Register, pp. 46969 *et seq.*), and as they may be revised, shall have the meanings set out in such rules and regulations unless the context in which such words or phrases are used in this article clearly imports a different meaning.~~

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

Base Flood Elevation (BFE) means the highest water surface elevation anticipated at any given point during the base flood.

Basement means that portion of a building having its floor subgrade (below ground level) on all sides.

Commissioner means the Commissioner of the Department of Watershed Management, or a designee.

Elevation means raising an existing structure or demolishing and rebuilding an existing structure within the structure's original footprint area.

Floodplains ~~include those~~ means any areas of land presently having natural or man-made contours of elevation at or below the base flood elevation shown on the flood maps and those areas of land which are not so shown on the flood maps ~~and where inundation is likely to occur during a base flood as determined from evidence of prior flooding or as verified~~ determined by engineering-hydrologic studies to determine-establish the probable depth of such floodwaters.

Floodway ~~includes~~ means any channel through which water passes at depths or velocities capable of discharging a base flood without increasing the elevation to which floodwaters would rise by more than one foot anywhere in a special flood hazard area.

Footprint area means the total area of a structure's lowest floor as defined by the exterior foundation walls. Footprint area shall not include decks, patios, porches, garages, additions, or other areas that are not within the boundaries of the exterior foundation walls.

Highest observed flood means the water surface elevation of the highest flood on record in the Department of Watershed Management as measured from the lowest grade adjacent to the structure to the top of the high water mark.

Lowest floor means the lowest enclosed area of a structure, including the basement. An unfinished, flood-resistant area below an elevated structure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such area is built in compliance with this ordinance.

Single family residential shall mean single family dwellings as defined in Atlanta City Code § 16-29.001(12)(a)1.

Special Flood Hazard Area (SFHA) means the land subject to a one percent or greater chance of flooding in any given year. This includes all floodplain and flood prone areas at or below the base flood elevation (including A, A1-30, A-99, AE, AO, AH, and AR on the Flood Hazard

Boundary Map or the Flood Insurance Rate Map), and all other areas subject to inundation during the base flood.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the value of the structure before the damage occurred, as provided in 44 C.F.R. § 59.1.

Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a building taking place during a 10-year period in which the cumulative cost equals or exceeds 50 percent of the value of the structure prior to the improvement, as provided in 44 C.F.R. § 59.1.

Value of the structure means (1) the actual cash value of the structure as set out in "Table 100 Building Valuation Data" at § 104.2 of the Atlanta City Code, and as permitted by FEMA Publication 213 page 10, or (2) the appraised value of the structure according to the property tax records in the Fulton County or DeKalb County tax assessor database.

**SECTION 3:** That Atlanta City Code § 74-204 entitled "Permits Required" is hereby amended to read as follows:

**Sec. 74-204. Permits required.**

Use of lands and buildings, and construction, reconstruction, repair, modification or demolition of structures within floodplains, including special flood hazard areas, shall require review and approval of a permit by the eCommissioner of the department of public works.

Any proposal which includes any of the activities described in this article shall be submitted to the eCommissioner of the department of public works for review before any such activity is commenced. The eCommissioner, or an authorized representative of the commissioner, may authorize the approval of any of such activities upon a finding, based on detailed plans and specifications submitted with the proposal, that the activity can be completed and occupied or used in full compliance with the requirements of this article.

No part of any such activity shall be commenced before such permit approval has been issued and all other permits and licenses required by applicable law have been issued or obtained. The eCommissioner may recommend the revocation of any such permit approval when the eCommissioner determines the activity is not being accomplished, or that the land is not being

used or occupied, as shown on the plans and specifications approved by the eCommissioner. A permit approval so revoked may be reinstated upon application by the holder under such rules and conditions as are established by the eCommissioner consistent with the requirements of this article and other applicable laws.

The eCommissioner shall not, by authorizing the approval of a permit under the authority of this article, authorize any use of land, any extension or enlargement of a use of land which existed before the original date of enactment of the provisions of said article, or the commencement of any of the activities described in this article, where the effect thereof would be to decrease the volume of existing flood storage on that land or to increase flooding conditions upstream, downstream or adjacent to that land.

(1) *Protection of floodways.* The floodway shall be that as defined in the flood insurance study, City of Atlanta, Georgia, Fulton and DeKalb County, Federal Emergency Management Agency, revised June 22, 1998, and as it may be subsequently revised or extended. On those watercourses and rivers regulated hereunder where the floodway has not been defined in the said flood insurance study and until such time as these watercourses and rivers are defined in an officially adopted or revised flood insurance study, the floodway shall be defined as the channel of the watercourse or river and the adjacent areas of the defined or undefined floodplain that must be reserved in order to discharge the 100-year base flood without cumulatively increasing the water surface elevation more than one foot upstream of, downstream of, or at the point being considered. No fill or encroachments shall be placed within the defined floodway that would impair the ability to carry and discharge the waters resulting from the 100-year base flood.

(2) *Floodplain protection.* The eCommissioner shall not authorize the approval of any permit authorizing the placement of fill or stored materials, or the construction of any building or other structure within the floodplain. Earth-disturbing activities in the floodplain shall be permitted only when the resulting configuration shall allow stormwater to enter the floodway by sheet flow (not channelized flow) and results in no loss of existing flood volume. Any earth-disturbing activities within a floodplain shall be subject to requirements of stream bank buffer limits and should be constructed using best management practices for soil erosion and sedimentation control. The use of compensating excavation or contouring procedures to modify flood hazard limits may only apply to install necessary public roadway and utilities within the flood limits to support existing and new property(s) which are not within the flood limits.

All applications for permits issued by the eCommissioner which would allow any use or construction wholly or partly in a special flood hazard area shall include detailed plans and specifications which demonstrate that no expansion of a special flood hazard area would result from the work which would be authorized by any such permit. No such permit shall authorize

any proposed use or construction which would have a finished elevation less than two feet higher than the nearest base flood elevation and that would be closer than 15 feet from the nearest base flood elevation, and no such permit shall be issued until the plans and specifications submitted have been authorized by the eCommissioner. Any comments or requirements endorsed on such plans and specifications, or on an addendum thereto, by the eCommissioner shall become a part of any permit issued for the work covered by the plans and specifications and shall be enforced as are all other requirements applicable to such permit.

(3) *Special flood hazard areas; further use restrictions.* Where a residential, commercial, industrial or other zoning district established under Part 16 for general regulations of uses and structures is in whole or in part also within the limits of a special flood hazard area, uses within the special flood hazard area shall not necessarily include all those generally permitted in the residential, commercial, industrial or other such zoning district, but only those which by kind, character or location meet the objectives of this article.

(4) *Modification to existing structures or existing usages of the floodplain in violation of, but predating the provisions of this article.* Minor modifications and routine maintenance of uses and structures which were lawful prior to the original date of enactment of the provisions of this article, including existing structures, fills, pavements, utilities, mobile homes, mobile home sites and other facilities, shall be subject to the following restrictions:

Any modification to an existing usage, when such existing usage is in violation of this article, that enhances the protection of life or property or which is reasonably necessary to the maintenance and upkeep of the property concerned and which does not extend the scope and magnitude of the existing violation of these regulations, is permitted provided the value of such modification or maintenance does not exceed 50 percent of the ~~fair market~~ value of the structure or total existing usage prior to such modification or maintenance, excluding the value of the land but including the value of existing structures, utility service connections, fills, pavements, slabs, mobile home sites and other facilities which can be reasonably demonstrated as an integral part of that existing usage.

Any improvement, modification or maintenance and any repairs or reconstruction required by any reason, including damages arising from normal deterioration, flood, other natural act or accident, of any existing usage where such existing usage is in violation of this article, shall bring that existing usage under the scope of the regulations set forth in this subsection 74-20488(4); and that existing usage shall be brought into compliance with this article, providing that the total value of such improvement, modification, maintenance, repair or reconstruction exceeds 50 percent of the ~~fair market~~ value of the structure or existing usage before such improvement, modification or maintenance or before such flood, other natural act or accident,

excluding the value of the landing but including the prior value of structures, utility service connections, fills, pavements, slabs, mobile home sites and other facilities which can be reasonably demonstrated as an integral part of the existing usage prior to the event.

**SECTION 4:** That a new section 74-205 of the Atlanta City Code entitled "Elevation of Existing Structures" is hereby added to read as follows:

**Sec. 74-205. Elevation of existing structures.**

When an existing single family residential structure located within the floodplain, floodway, or SFHA has sustained substantial damage or where an owner proposes a substantial improvement, and due to site conditions the structure cannot be relocated at least fifteen (15) feet horizontally from the nearest base flood elevation, the structure shall be elevated such that the lowest floor is the greater of either: three (3) feet above the base flood elevation or two (2) feet above the highest observed flood. The following provisions shall apply to elevation of single family residential structures under this subsection:

- (1) Elevations shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) Elevations shall be constructed with materials and utility equipment resistant to flood damage in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008 or as amended;
- (3) Elevations shall utilize methods and practices that minimize flood damage and encroachment into the floodway and floodplain;
- (4) Elevations shall not include any fully enclosed area below the lowest floor. The area below the lowest floor shall be an unfinished and flood-resistant area;
- (5) The area below the lowest floor shall be designed with wall openings to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater in accordance with the following specifications:
  - (a) Designs for complying with the requirements of this subsection shall be certified by either a professional engineer or architect;
  - (b) Wall openings shall meet the following minimum criteria:

- (i) Wall openings shall be constructed to allow the natural flow of floodwaters under the lowest floor of the structure. The total area of the wall openings shall be equal to fifty (50) percent of the total wall area below the base flood elevation that is exposed to flood waters. Wall openings shall be equally distributed along all walls exposed to flood waters.
  - (ii) The bottoms of all wall openings shall be no higher than one foot above grade; and,
  - (iii) Openings may be equipped with screens, louvers, or bars provided they permit the natural flow of floodwater in both directions;
- (c) The unfinished and flood-resistant area below the lowest floor shall only be used for parking vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and,
- (d) The interior portion of the area below the lowest floor shall not be partitioned or finished into separate rooms; provided however, the minimum area necessary for access to upper floors may be finished with flood damage-resistant materials in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008, or as amended.
- (6) All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing equipment (including water heater), and other service facilities shall be located at least three (3) feet above the base flood elevation or two (2) feet above the highest observed flood (whichever is greater) to prevent water from entering or accumulating within the components during conditions of flooding;
- (7) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this ordinance, shall be undertaken only if the noncompliance is not furthered, extended or increased. No portion of an elevated structure shall exceed the original footprint area or extend further into the floodplain or floodway; provided however, an extension of the elevated structure into the floodplain in the form of a landing and stairs shall be permitted to allow for minimum entry access.

- (8) If the proposed elevation is located in multiple flood zones or if multiple base flood elevations cross the site, the higher or more restrictive base flood elevation shall take precedence.

**SECTION 5:** That a new section 74-206 of the Atlanta City Code entitled “Relationship to Other Laws” is hereby added to read as follows:

**Sec. 74-206. Relationship to other laws.**

- (a) Compatibility with other regulations. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, deed restriction or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for the riparian environment shall control.
- (b) Relationship to 42 U.S.C. 4001 et seq. This ordinance is enacted pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), 44 C.F.R. § 60.1 et seq., and to implement the requirements of the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 et seq. Words and phrases used in this article which are defined in the National Flood Insurance Program rules and regulations codified at 44 C.F.R. § 59.1 et seq. and effective December 1, 1976 (41 FR 46968 et seq.), and as they may be revised, shall have the meanings set out in such rules and regulations unless the context in which such words or phrases are used in this article clearly imports a different meaning.
- (c) Severability. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**SECTION 6:** That all ordinances or parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

**Part II: Legislative White Paper:** (This portion of the Legislative Request Form will be shared with City Council members and staff)

**A. To be completed by Legislative Counsel:**

**Committee of Purview:** City Utilities Committee

**Caption:** An Ordinance to Amend Chapter 74, Article VI, "Flood Area Regulations" to Reduce or Avoid Future Flood Losses, Enhance the Function of the Floodplain, and for other purposes.

**Council Meeting Date:** February 1, 2010

**Requesting Dept:** Watershed Management

**B. To be completed by the department:**

**1. Please provide a summary of the purpose of this legislation (Justification Statement).**

The purpose of this legislation is to amend Article VI of Chapter 74 of the Atlanta City Code (Flood Area Regulations) to provide standards for the elevation of existing residences in the floodplain, to comply with the requirements of the Metropolitan North Georgia Water Planning District, and for other purposes.

**2. Please provide background information regarding this legislation.**

***Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.***

The City experienced severe weather from September 18, 2009 to September 25, 2009 that resulted in floods, property damage, injury, and loss of life. The City has identified over 400 structures that were damaged in the flood, and a portion of these structures may be required to elevate or relocate in accordance with the National Flood Insurance Program regulations. The City seeks to adopt amendments to the Flood Area Regulations Ordinance that provide rules for rebuilding or elevating damaged structures within the floodplain in a manner that reduces or avoids future flood losses.

**3. If Applicable/Known:**

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** N/A

(b) **Source Selection:** N/A

(c) Bids/Proposals Due: N/A

(d) Invitations Issued: N/A

(e) Number of Bids: N/A

(f) Proposals Received: N/A

(g) Bidders/Proponents: N/A

(h) Term of Contract: N/A

4. Fund Account Center (*Ex. Name and number*):

Fund:, Account:, Center:, Function Activity:

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact: NA

*Example: This legislation will result in a reduction in the amount of \_\_\_\_\_ to Fund Account Center Number \_\_\_\_\_.*

7. Method of Cost Recovery:

*Examples:*

- a. *Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. *Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Kenna Laslavic

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Maisha Land-Wood

Contact Number: (404) 330-6887

Originating Department: Department of Watershed Management

Committee(s) of Purview: City Utilities Committee

Chief of Staff Deadline: December 29, 2009

Anticipated Committee Meeting Date(s): January 26, 2010

Anticipated Full Council Date: February 1, 2010

Legislative Counsel's Signature: Marc Goncher

Commissioner Signature: Robert G. Hunter scP

Chief Procurement Officer Signature: N/A

**CAPTION**

**AN ORDINANCE TO AMEND CHAPTER 74, ARTICLE VI, "FLOOD AREA REGULATIONS" TO REDUCE OR AVOID FUTURE FLOOD LOSSES, ENHANCE THE FUNCTION OF THE FLOODPLAIN; AND FOR OTHER PURPOSES.**

Mayor's Staff Only

Received by CPO: \_\_\_\_\_ Received by LC from CPO: \_\_\_\_\_  
(date) (date)

Received by Mayor's Office: 12/24/09 Reviewed by: [Signature]  
(date) (date)

Submitted to Council: \_\_\_\_\_

RCS# 18  
1/19/10  
1:55 PM

Atlanta City Council

REGULAR SESSION

CONSENT II

REFER

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
B Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT II